



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2010 REGULAR SESSION

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SENATE BILL NO. 107

AS ENACTED

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WEDNESDAY, APRIL 14, 2010

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TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adkins

AN ACT relating to crimes and punishments and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

1        ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO  
2 READ AS FOLLOWS:

3        (1) A person is guilty of trafficking in salvia when he or she knowingly and  
4        unlawfully traffics in salvia for human consumption.

5        (2) Trafficking in salvia is a Class A misdemeanor.

6        ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO  
7 READ AS FOLLOWS:

8        (1) A person is guilty of possession of salvia when he or she knowingly and  
9        unlawfully possesses salvia for human consumption.

10       (2) Possession of salvia is a Class B misdemeanor.

11       ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO  
12 READ AS FOLLOWS:

13       (1) A person is guilty of salvia cultivation when he or she knowingly and unlawfully  
14       plants, cultivates, or harvests salvia with the intent to sell or transfer it for human  
15       consumption.

16       (2) Salvia cultivation is a Class A misdemeanor.

17       ➔Section 4. KRS 218A.010 is amended to read as follows:

18 As used in this chapter:

19 (1) "Administer" means the direct application of a controlled substance, whether by  
20 injection, inhalation, ingestion, or any other means, to the body of a patient or  
21 research subject by:

22 (a) A practitioner or by his authorized agent under his immediate supervision and  
23 pursuant to his order; or

24 (b) The patient or research subject at the direction and in the presence of the  
25 practitioner;

- 1 (2) "Anabolic steroid" means any drug or hormonal substance chemically and  
2 pharmacologically related to testosterone that promotes muscle growth and includes  
3 those substances listed in KRS 218A.090(5) but does not include estrogens,  
4 progestins, and anticosteroids;
- 5 (3) "Cabinet" means the Cabinet for Health and Family Services;
- 6 (4) "Child" means any person under the age of majority as specified in KRS 2.015;
- 7 (5) "Controlled substance" means methamphetamine, or a drug, substance, or  
8 immediate precursor in Schedules I through V and includes a controlled substance  
9 analogue;
- 10 (6) (a) "Controlled substance analogue," except as provided in subparagraph (b) of  
11 this subsection, means a substance:
- 12 1. The chemical structure of which is substantially similar to the structure  
13 of a controlled substance in Schedule I or II; and
- 14 2. Which has a stimulant, depressant, or hallucinogenic effect on the  
15 central nervous system that is substantially similar to or greater than the  
16 stimulant, depressant, or hallucinogenic effect on the central nervous  
17 system of a controlled substance in Schedule I or II; or
- 18 3. With respect to a particular person, which such person represents or  
19 intends to have a stimulant, depressant, or hallucinogenic effect on the  
20 central nervous system that is substantially similar to or greater than the  
21 stimulant, depressant, or hallucinogenic effect on the central nervous  
22 system of a controlled substance in Schedule I or II.
- 23 (b) Such term does not include:
- 24 1. Any substance for which there is an approved new drug application;
- 25 2. With respect to a particular person, any substance if an exemption is in  
26 effect for investigational use for that person pursuant to federal law to  
27 the extent conduct with respect to such substance is pursuant to such

1 exemption; or

2 3. Any substance to the extent not intended for human consumption before  
3 the exemption described in subparagraph 2. of this paragraph takes  
4 effect with respect to that substance;

5 (7) "Counterfeit substance" means a controlled substance which, or the container or  
6 labeling of which, without authorization, bears the trademark, trade name, or other  
7 identifying mark, imprint, number, or device, or any likeness thereof, of a  
8 manufacturer, distributor, or dispenser other than the person who in fact  
9 manufactured, distributed, or dispensed the substance;

10 (8) "Dispense" means to deliver a controlled substance to an ultimate user or research  
11 subject by or pursuant to the lawful order of a practitioner, including the packaging,  
12 labeling, or compounding necessary to prepare the substance for that delivery;

13 (9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V  
14 controlled substance to or for the use of an ultimate user;

15 (10) "Distribute" means to deliver other than by administering or dispensing a controlled  
16 substance;

17 (11) "Drug" means:

18 (a) Substances recognized as drugs in the official United States Pharmacopoeia,  
19 official Homeopathic Pharmacopoeia of the United States, or official National  
20 Formulary, or any supplement to any of them;

21 (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or  
22 prevention of disease in man or animals;

23 (c) Substances (other than food) intended to affect the structure or any function of  
24 the body of man or animals; and

25 (d) Substances intended for use as a component of any article specified in this  
26 subsection.

27 It does not include devices or their components, parts, or accessories;

- 1 (12) "Good faith prior examination," as used in KRS Chapter 218A and for criminal  
2 prosecution only, means an in-person medical examination of the patient conducted  
3 by the prescribing practitioner or other health-care professional routinely relied  
4 upon in the ordinary course of his or her practice, at which time the patient is  
5 physically examined and a medical history of the patient is obtained. "In-person"  
6 includes telehealth examinations. This subsection shall not be applicable to hospice  
7 providers licensed pursuant to KRS Chapter 216B;
- 8 (13) "Hazardous chemical substance" includes any chemical substance used or intended  
9 for use in the illegal manufacture of a controlled substance as defined in this section  
10 or the illegal manufacture of methamphetamine as defined in KRS 218A.1431,  
11 which:
- 12 (a) Poses an explosion hazard;
  - 13 (b) Poses a fire hazard; or
  - 14 (c) Is poisonous or injurious if handled, swallowed, or inhaled;
- 15 (14) "Immediate precursor" means a substance which is the principal compound  
16 commonly used or produced primarily for use, and which is an immediate chemical  
17 intermediary used or likely to be used in the manufacture of a controlled substance  
18 or methamphetamine, the control of which is necessary to prevent, curtail, or limit  
19 manufacture;
- 20 (15) "Intent to manufacture" means any evidence which demonstrates a person's  
21 conscious objective to manufacture a controlled substance or methamphetamine.  
22 Such evidence includes but is not limited to statements and a chemical substance's  
23 usage, quantity, manner of storage, or proximity to other chemical substances or  
24 equipment used to manufacture a controlled substance or methamphetamine;
- 25 (16) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and  
26 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical,  
27 positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer"

1 means the optical or geometric isomer;

2 (17) "Manufacture," except as provided in KRS 218A.1431, means the production,  
3 preparation, propagation, compounding, conversion, or processing of a controlled  
4 substance, either directly or indirectly by extraction from substances of natural  
5 origin or independently by means of chemical synthesis, or by a combination of  
6 extraction and chemical synthesis, and includes any packaging or repackaging of the  
7 substance or labeling or relabeling of its container except that this term does not  
8 include activities:

9 (a) By a practitioner as an incident to his administering or dispensing of a  
10 controlled substance in the course of his professional practice;

11 (b) By a practitioner, or by his authorized agent under his supervision, for the  
12 purpose of, or as an incident to, research, teaching, or chemical analysis and  
13 not for sale; or

14 (c) By a pharmacist as an incident to his dispensing of a controlled substance in  
15 the course of his professional practice;

16 (18) "Marijuana" means all parts of the plant *Cannabis* sp., whether growing or not; the  
17 seeds thereof; the resin extracted from any part of the plant; and every compound,  
18 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin  
19 or any compound, mixture, or preparation which contains any quantity of these  
20 substances;

21 (19) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only,  
22 means an accounting of a patient's medical background, including but not limited to  
23 prior medical conditions, prescriptions, and family background;

24 (20) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only,  
25 means a lawful order of a specifically identified practitioner for a specifically  
26 identified patient for the patient's health-care needs. "Medical order" may or may  
27 not include a prescription drug order;

- 1 (21) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only,  
 2 means a record, other than for financial or billing purposes, relating to a patient,  
 3 kept by a practitioner as a result of the practitioner-patient relationship;
- 4 (22) "Methamphetamine" means any substance that contains any quantity of  
 5 methamphetamine, or any of its salts, isomers, or salts of isomers;
- 6 (23) "Narcotic drug" means any of the following, whether produced directly or indirectly  
 7 by extraction from substances of vegetable origin, or independently by means of  
 8 chemical synthesis, or by a combination of extraction and chemical synthesis:
- 9 (a) Opium and opiate, and any salt, compound, derivative, or preparation of  
 10 opium or opiate;
- 11 (b) Any salt, compound, isomer, derivative, or preparation thereof which is  
 12 chemically equivalent or identical with any of the substances referred to in  
 13 paragraph (a) of this subsection, but not including the isoquinoline alkaloids  
 14 of opium;
- 15 (c) Opium poppy and poppy straw;
- 16 (d) Coca leaves, except coca leaves and extracts of coca leaves from which  
 17 cocaine, ecgonine, and derivatives of ecgonine or their salts have been  
 18 removed;
- 19 (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
- 20 (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
- 21 (g) Any compound, mixture, or preparation which contains any quantity of any of  
 22 the substances referred to in paragraphs (a) to (f) of this subsection;
- 23 (24) "Opiate" means any substance having an addiction-forming or addiction-sustaining  
 24 liability similar to morphine or being capable of conversion into a drug having  
 25 addiction-forming or addiction-sustaining liability. It does not include, unless  
 26 specifically designated as controlled under KRS 218A.030, the dextrorotatory  
 27 isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does

- 1 include its racemic and levorotatory forms;
- 2 (25) "Opium poppy" means the plant of the species *papaver somniferum* L., except its  
3 seeds;
- 4 (26) "Person" means individual, corporation, government or governmental subdivision  
5 or agency, business trust, estate, trust, partnership or association, or any other legal  
6 entity;
- 7 (27) "Physical injury" has the same meaning it has in KRS 500.080;
- 8 (28) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- 9 (29) "Pharmacist" means a natural person licensed by this state to engage in the practice  
10 of the profession of pharmacy;
- 11 (30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific  
12 investigator, optometrist as authorized in KRS 320.240, advanced registered nurse  
13 practitioner as authorized under KRS 314.011, or other person licensed, registered,  
14 or otherwise permitted by state or federal law to acquire, distribute, dispense,  
15 conduct research with respect to, or to administer a controlled substance in the  
16 course of professional practice or research in this state. "Practitioner" also includes  
17 a physician, dentist, podiatrist, veterinarian, or advanced registered nurse  
18 practitioner authorized under KRS 314.011 who is a resident of and actively  
19 practicing in a state other than Kentucky and who is licensed and has prescriptive  
20 authority for controlled substances under the professional licensing laws of another  
21 state, unless the person's Kentucky license has been revoked, suspended, restricted,  
22 or probated, in which case the terms of the Kentucky license shall prevail;
- 23 (31) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal  
24 prosecution only, means a medical relationship that exists between a patient and a  
25 practitioner or the practitioner's designee, after the practitioner or his designee has  
26 conducted at least one (1) good faith prior examination;
- 27 (32) "Prescription" means a written, electronic, or oral order for a drug or medicine, or



combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, optometric practitioner, or advanced registered nurse practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(33) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;

(34) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;

(35) "Salvia" means Salvia divinorum or Salvinorin A and includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of that plant, and every compound, manufacture, derivative, mixture, or preparation of that plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation of that plant, its seeds, or extracts. The term shall not include any other species in the genus salvia;

(36) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;

~~(37)~~~~(36)~~ "Sell" means to dispose of a controlled substance to another person for

1 consideration or in furtherance of commercial distribution;

2 ~~(38)~~~~((37))~~ "Serious physical injury" has the same meaning it has in KRS 500.080;

3 ~~(39)~~~~((38))~~ "Telehealth" has the same meaning it has in KRS 311.550;

4 ~~(40)~~~~((39))~~ "Tetrahydrocannabinols" means synthetic equivalents of the substances  
5 contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or  
6 synthetic substances, derivatives, and their isomers with similar chemical structure  
7 and pharmacological activity such as the following:

- 8 1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
- 9 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
- 10 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

11 ~~(41)~~~~((40))~~ "Traffic," except as provided in KRS 218A.1431, means to manufacture,  
12 distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute,  
13 dispense, or sell a controlled substance;

14 ~~(42)~~~~((41))~~ "Transfer" means to dispose of a controlled substance to another person  
15 without consideration and not in furtherance of commercial distribution; and

16 ~~(43)~~~~((42))~~ "Ultimate user" means a person who lawfully possesses a controlled substance  
17 for his own use or for the use of a member of his household or for administering to  
18 an animal owned by him or by a member of his household.

19 ➔Section 5. KRS 218A.050 is amended to read as follows:

20 Unless otherwise rescheduled by regulation of the Cabinet for Health and Family  
21 Services, the controlled substances listed in this section are included in Schedule I:

- 22 (1) Any material, compound, mixture, or preparation which contains any quantity of the  
23 following opiates, including their isomers, esters, ethers, salts, and salts of isomers,  
24 esters, and ethers, unless specifically excepted, whenever the existence of these  
25 isomers, esters, ethers, or salts is possible within the specific chemical designation:  
26 Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine;  
27 Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol;

1 Betaprodine; Clonitazene; Dextromoramide; Dextrophan; Diampromide;  
 2 Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene;  
 3 Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene;  
 4 Etoxeridine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide;  
 5 Levophenacymorphan; Morpheridine; Noracymethadol; Norlevorphanol;  
 6 Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan;  
 7 Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide;  
 8 Trimeperidine.

9 (2) Any material, compound, mixture, or preparation which contains any quantity of the  
 10 following opium derivatives, including their salts, isomers, and salts of isomers,  
 11 unless specifically excepted, whenever the existence of these salts, isomers, or salts  
 12 of isomers is possible within the specific chemical designation: Acetorphine;  
 13 Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-  
 14 Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin;  
 15 Hydromorphinol; Methyldesorphine; Methyldihydromorphine; Morphine  
 16 methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine;  
 17 Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

18 (3) Any material, compound, mixture, or preparation which contains any quantity of the  
 19 following hallucinogenic substances, their salts, isomers, or salts of isomers, unless  
 20 specifically excepted, whenever the existence of these salts, isomers, and salts of  
 21 isomers is possible within the specific chemical designation: 3, 4-  
 22 methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4,  
 23 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-  
 24 methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide;  
 25 Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl  
 26 benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2  
 27 Methylamino-1-phenylpropan-1-one (including, but not limited to, Methcathinone,

1 Cat, and Ephedrone); salvia.

2 (4) Any material, compound, mixture, or preparation which contains any quantity of the  
3 following substance having a depressant effect on the central nervous system,  
4 including its salts, isomers, and salts of isomers, unless specifically excepted,  
5 whenever the existence of these salts, isomers, or salts of isomers is possible within  
6 the specific chemical designation: gamma hydroxybutyric acid.

7 ➔Section 6. KRS 217.065 is amended to read as follows:

8 Except for violations of KRS 218A.350, a drug or device shall be deemed to be  
9 misbranded:

10 (1) If its labeling is false or misleading in any particular;

11 (2) If in package form unless it bears a label containing:

12 (a) The name and place of business of the manufacturer, packer, or distributor,  
13 except that, in the case of a prescription drug, it shall bear the name and place  
14 of business of the manufacturer, and the name and place of business of the  
15 packer, or distributor, if other than the manufacturer; and

16 (b) An accurate statement of the quantity of the contents in terms of weight,  
17 measure, or numerical count; provided that reasonable variations shall be  
18 permitted, and exemptions as to small packages shall be established, by  
19 regulations prescribed by the secretary;

20 (3) If any word, statement, or other information required by or under authority of KRS  
21 217.005 to 217.215 to appear on the label or labeling is not prominently placed  
22 thereon with such conspicuousness (as compared with other words, statements,  
23 designs or devices, in the labeling) and in such terms as to render it likely to be read  
24 and understood by the ordinary individual under customary conditions of purchase  
25 and use;

26 (4) If it is for use by man and contains any quantity of the narcotic or hypnotic  
27 substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal,

1 chloral, coca, cocaine, codeine, heroin, marijuana, salvia, morphine, opium,  
2 paraldehyde, peyote, or sulfonmethane, or any chemical derivative of such  
3 substance, which derivative has been by the secretary after investigation, found to  
4 be, and by regulations under KRS 217.005 to 217.215 designated as, habit forming;  
5 unless its label bears the name and quantity or proportion of such substance or  
6 derivative and in juxtaposition therewith the statement "Warning -- May be habit-  
7 forming";

8 (5) If it is a drug and is not designated solely by a name recognized in an official  
9 compendium unless its label bears:

10 (a) The common or usual name of the drug, if such there be; and

11 (b) In case it is fabricated from two (2) or more ingredients, the common or usual  
12 name of each active ingredient, including the kind and quantity or proportion  
13 of any alcohol, and also including whether active or not the name and quantity  
14 or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin,  
15 amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis,  
16 digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or  
17 any derivative or preparation of any such substances, contained therein;  
18 provided that to the extent that compliance with this subsection is  
19 impracticable, exemptions shall be established by regulations promulgated by  
20 the secretary;

21 (6) Unless its labeling bears:

22 (a) Adequate directions for use; and

23 (b) Such adequate warnings against use in those pathological conditions or by  
24 children where its use may be dangerous to health, or against unsafe dosage or  
25 methods or duration of administration or application, in such manner and  
26 form, as are necessary for the protection of users; provided that where any  
27 requirement of subsection (a) of this subsection, as applied to any drug or

1 device, is not necessary for the protection of the public health, the secretary  
2 shall promulgate regulations exempting such drug or device from such  
3 requirements;

4 (7) If it purports to be a drug the name of which is recognized in an official  
5 compendium, unless it is packaged and labeled as prescribed therein; provided that  
6 the method of packing may be modified with a consent of the cabinet. Whenever a  
7 drug is recognized in both the United States Pharmacopoeia and the Homeopathic  
8 Pharmacopoeia of the United States, it shall be subject to the requirements of the  
9 United States Pharmacopoeia with respect to packaging and labeling unless it is  
10 labeled and offered for sale as a homeopathic drug, in which case it shall be subject  
11 to the provisions of the Homeopathic Pharmacopoeia of the United States, and not  
12 to those of the United States Pharmacopoeia;

13 (8) If it has been found by the cabinet to be a drug liable to deterioration, unless it is  
14 packaged in such form and manner, and its label bears a statement of such  
15 precautions, as the secretary shall by regulations require as necessary for the  
16 protection of public health. No such regulation shall be established for any drug  
17 recognized in an official compendium until the secretary shall have informed the  
18 appropriate body charged with the revision of such compendium of the need for  
19 such packaging or labeling requirements and such body shall have failed within a  
20 reasonable time to prescribe such requirements;

21 (9) (a) If it is a drug and its container is so made, formed, or filled as to be  
22 misleading; or

23 (b) If it is an imitation of another drug; or

24 (c) If it is offered for sale under the name of another drug;

25 (10) If it is dangerous to health when used in the dosage, or with the frequency or  
26 duration prescribed, recommended, or suggested in the labeling thereof;

27 (11) If:

- 1 (a) It is a drug intended for use by man which is a habit forming drug to which  
2 subsection (4) of this section applies; or because of its toxicity or other  
3 potentiality for harmful effect, or the method of its use, or the collateral  
4 measures necessary to its use is not safe for use except under the supervision  
5 of a practitioner, and is not dispensed upon a prescription unless prior to  
6 dispensing its label bears the statement "Caution: Federal law prohibits  
7 dispensing without prescription"; or
- 8 (b) It is a drug or device and its label (as originally packed) directs that it is to be  
9 dispensed or sold only on prescription, unless it is dispensed or sold on a  
10 prescription of an authorized practitioner and its label (as dispensed) bears the  
11 name and place of business of the dispenser or seller, the serial number and  
12 date of such prescription, and the name of such licensed practitioner. Such  
13 prescriptions shall not be refilled except on the specific authorization of the  
14 prescribing practitioner; provided that where any requirement of this  
15 subsection, as applied to any drug or device, is not necessary for the protection  
16 of the public health, the secretary shall promulgate regulations exempting such  
17 drug or device from such requirement;
- 18 (12) A drug sold on a prescription of a practitioner (except a drug sold in the course of  
19 the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be  
20 exempt from the requirements of this section if:
- 21 (a) Such practitioner is licensed by law to administer such drug; and  
22 (b) Such drug bears a label containing the name and place of business of the  
23 seller, the serial number and date of such prescription, and the name of such  
24 practitioner.
- 25 (13) It is not the intention of subsection (2)(a) of this section as amended herein to  
26 require the name and place of business of the wholesaler to appear upon the label of  
27 the package unless otherwise required by this section.

1        ➔Section 7. KRS 218A.1401 is amended to read as follows:

2        (1) A person is guilty of selling controlled substances to a minor when he, being  
3        eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any  
4        quantity of a controlled substance other than salvia to any person under eighteen  
5        (18) years of age.

6        (2) Selling controlled substances to a minor is a Class C felony for a first offense, and a  
7        Class B felony for each subsequent offense, unless a more severe penalty for  
8        trafficking in controlled substances is applicable, in which case the higher penalty  
9        shall apply.

10       ➔Section 8. KRS 218A.141 is amended to read as follows:

11       Any person convicted of, pleading guilty to, or entering an Alford plea to any offense  
12       involving trafficking in a controlled substance, trafficking in salvia, or trafficking in  
13       marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

- 14       (1) Pay the costs of disposal of the controlled substances;
- 15       (2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used  
16       in or in furtherance of the trafficking offense;
- 17       (3) Pay the costs involved with environmental clean-up and remediation required for  
18       the real property and personal property used for or in furtherance of the trafficking  
19       offenses; and
- 20       (4) Pay the costs of protecting the public from dangers from chemicals, materials, and  
21       other items used for or in furtherance of the trafficking offense from the time of the  
22       arrest until the time that the clean-up or remediation of the real and personal  
23       property is concluded. The Commonwealth shall have a lien on all of the assets of  
24       the defendant until the amount specified by the court under this subsection is paid in  
25       full. The Commonwealth's attorney shall file the lien.

26       ➔Section 9. KRS 218A.1411 is amended to read as follows:

27       (1) Any person who unlawfully traffics in a controlled substance classified in Schedules



I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) yards of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.

**(2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to salvia.**

➔Section 10. KRS 218A.1413 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the second degree when:

(a) He knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; or specified in KRS 218A.1412; or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, salvia, or marijuana; or

(b) He knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:

1. Enhancing performance in an exercise, sport, or game; or
2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.

(2) Any person who violates the provisions of subsection (1) of this section shall:

(a) For the first offense be guilty of a Class D felony.

(b) For a second or subsequent offense be guilty of a Class C felony.

➔Section 11. KRS 218A.1416 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the second degree when he knowingly and unlawfully possesses: a controlled substance classified in

Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, salvia, or marijuana.

(2) Possession of a controlled substance in the second degree is:

(a) For a first offense a Class A misdemeanor.

(b) For a second or subsequent offense a Class D felony.

➔Section 12. KRS 218A.276 is amended to read as follows:

(1) Any person found guilty of possession of marijuana pursuant to KRS 218A.1422 or possession of salvia pursuant to Section 2 of this Act may be ordered to a facility

designated by the secretary of the Cabinet for Health and Family Services where a program of education, treatment, and rehabilitation not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated facility shall present himself for registration and initiation of a treatment program within five (5) days of the date of sentencing. If without good cause, the person fails to appear at the designated facility within the specified time, or if any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than ninety (90) days or a fine of not more than two hundred fifty dollars (\$250), or both. Upon discharge of the person from the facility by the secretary of the Cabinet for Health and Family Services, or his designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his designee, shall notify the sentencing court of the date of such discharge from the facility.

(2) The secretary of the Cabinet for Health and Family Services, or his designee, shall

1 inform each court of the identity and location of the facility to which a person  
2 sentenced by that court under this chapter shall be initially ordered.

3 (3) In the case of a person ordered to a facility for treatment and rehabilitation pursuant  
4 to this chapter, transportation to the facility shall be provided by order of the court  
5 when the court finds the person unable to convey himself to the facility within five  
6 (5) days of sentencing by reason of physical infirmity or financial incapability.

7 (4) The sentencing court shall immediately notify the designated facility of the sentence  
8 and its effective date.

9 (5) The secretary of the Cabinet for Health and Family Services, or his designee, may  
10 authorize transfer of the person from the initially designated facility to another  
11 facility for therapeutic purposes. The sentencing court shall be notified of  
12 termination of treatment by the terminating facility.

13 (6) Responsibility for payment for treatment services rendered to persons pursuant to  
14 this section shall be as under the statutes pertaining to payment by patients and  
15 others for services rendered by the Cabinet for Health and Family Services, unless  
16 the person and the facility shall arrange otherwise.

17 (7) None of the provisions of this chapter shall be deemed to preclude the court from  
18 exercising its usual discretion with regard to ordering probation or conditional  
19 discharge.

20 (8) In the case of any person who has been convicted of possession of marijuana or  
21 possession of salvia, the court may set aside and void the conviction upon  
22 satisfactory completion of treatment, probation, or other sentence, and issue to the  
23 person a certificate to that effect. A conviction voided under this subsection shall  
24 not be deemed a first offense for purposes of this chapter or deemed a conviction for  
25 purposes of disqualifications or disabilities imposed by law upon conviction of a  
26 crime.

27 ➔Section 13. KRS 218A.410 is amended to read as follows:

1 (1) The following are subject to forfeiture:

2 (a) Controlled substances listed in Schedule I that are possessed, transferred, sold,  
3 or offered for sale in violation of this chapter are contraband and shall be  
4 seized and summarily forfeited to the state.

5 (b) Controlled substances listed in Schedule I, which are seized or come into the  
6 possession of the state, the owners of which are unknown, are contraband and  
7 shall be summarily forfeited to the state.

8 (c) Species of plants from which controlled substances in Schedules I and II may  
9 be derived which have been planted or cultivated in violation of this chapter,  
10 or of which the owners or cultivators are unknown, or which are wild growths,  
11 may be seized and summarily destroyed or forfeited to the state. The failure,  
12 upon demand by the law enforcement agency or its authorized agent, of the  
13 person in occupancy or in control of land or premises upon which the species  
14 of plants are growing or being stored, to produce an appropriate registration,  
15 or proof that he is the holder thereof, constitutes authority for the seizure and  
16 forfeiture of the plants.

17 (d) All substances, machinery, or devices used for the manufacture, packaging,  
18 repackaging, or marking, and books, papers, and records, and all vehicles  
19 owned and used by the seller or distributor for the manufacture, distribution,  
20 sale, or transfer of substances in violation of KRS 218A.350 shall be seized  
21 and forfeited to the state. Substances manufactured, held, or distributed in  
22 violation of KRS 218A.350 shall be deemed contraband.

23 (e) All controlled substances which have been manufactured, distributed,  
24 dispensed, possessed, being held, or acquired in violation of this chapter.

25 (f) All raw materials, products, and equipment of any kind which are used, or  
26 intended for use, in manufacturing, compounding, processing, delivering,  
27 importing, or exporting any controlled substance in violation of this chapter.

- 1 (g) All property which is used, or intended for use, as a container for property  
2 described in paragraph (e) or (f) of this subsection.
- 3 (h) All conveyances, including aircraft, vehicles, or vessels, which are used, or  
4 intended for use, to transport, or in any manner to facilitate the transportation,  
5 for the purpose of sale or receipt of property described in paragraph (e) or (f)  
6 of this subsection, but:
- 7 1. No conveyance used by any person as a common carrier in the  
8 transaction of business as a common carrier is subject to forfeiture under  
9 this section unless it is proven beyond a reasonable doubt that the owner  
10 or other person in charge of the conveyance is a consenting party or  
11 privy to a violation of this chapter;
  - 12 2. No conveyance is subject to forfeiture under this section by reason of  
13 any act or omission established by the owner thereof to have been  
14 committed or omitted without his knowledge or consent;
  - 15 3. A forfeiture of a conveyance encumbered by a bona fide security interest  
16 is subject to the interest of the secured party if he neither had knowledge  
17 of nor consented to the act or omission;
  - 18 4. The forfeiture provisions of this paragraph shall not apply to any  
19 misdemeanor offense relating to marijuana or salvia.
- 20 (i) All books, records, and research products and materials, including formulas,  
21 microfilm, tapes, and data which are used, or intended for use, in violation of  
22 this chapter.
- 23 (j) Everything of value furnished, or intended to be furnished, in exchange for a  
24 controlled substance in violation of this chapter, all proceeds, including real  
25 and personal property, traceable to the exchange, and all moneys, negotiable  
26 instruments, and securities used, or intended to be used, to facilitate any  
27 violation of this chapter; except that no property shall be forfeited under this

1 paragraph, to the extent of the interest of an owner, by reason of any act or  
2 omission established by him to have been committed or omitted without his  
3 knowledge or consent. It shall be a rebuttable presumption that all moneys,  
4 coin, and currency found in close proximity to controlled substances, to drug  
5 manufacturing or distributing paraphernalia, or to records of the importation,  
6 manufacture, or distribution of controlled substances, are presumed to be  
7 forfeitable under this paragraph. The burden of proof shall be upon claimants  
8 of personal property to rebut this presumption by clear and convincing  
9 evidence. The burden of proof shall be upon the law enforcement agency to  
10 prove by clear and convincing evidence that real property is forfeitable under  
11 this paragraph.

12 (k) All real property, including any right, title, and interest in the whole of any lot  
13 or tract of land and any appurtenances or improvements, which is used or  
14 intended to be used, in any manner or part, to commit, or to facilitate the  
15 commission of, a violation of this chapter excluding any misdemeanor offense  
16 relating to marijuana or salvia, except that property shall be forfeited under  
17 this paragraph, to the extent of an interest of an owner, by reason of any act or  
18 omission established by the Commonwealth to have been committed or  
19 omitted with the knowledge or consent of the owner.

20 (2) Title to all property, including all interests in the property, forfeit under this section  
21 vests in the Commonwealth on the commission of the act or omission giving rise to  
22 forfeiture under this section together with the proceeds of the property after the  
23 time. Any property or proceeds subsequently transferred to any person shall be  
24 subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee  
25 establishes in the forfeiture proceeding that he is a subsequent bona fide purchaser  
26 for value without actual or constructive notice of the act or omission giving rise to  
27 the forfeiture.

1 (3) If any of the property described in this section cannot be located; has been  
 2 transferred to, sold to, or deposited with a third party; has been placed beyond the  
 3 jurisdiction of the court; has been substantially diminished in value by any act or  
 4 omission of the defendant; or, has been commingled with any property which  
 5 cannot be divided without difficulty, the court shall order the forfeiture of any other  
 6 property of the defendant up to the value of any property subject to forfeiture under  
 7 this section.

8 ➔Section 14. KRS 218A.500 is amended to read as follows:

9 As used in this section and KRS 218A.510:

10 (1) "Drug paraphernalia" means all equipment, products and materials of any kind  
 11 which are used, intended for use, or designed for use in planting, propagating,  
 12 cultivating, growing, harvesting, manufacturing, compounding, converting,  
 13 producing, processing, preparing, testing, analyzing, packaging, repackaging,  
 14 storing, containing, concealing, injecting, ingesting, inhaling, or otherwise  
 15 introducing into the human body a controlled substance in violation of this chapter.

16 It includes, but is not limited to:

- 17 (a) Kits used, intended for use, or designed for use in planting, propagating,  
 18 cultivating, growing, or harvesting of any species of plant which is a  
 19 controlled substance or from which a controlled substance can be derived;
- 20 (b) Kits used, intended for use, or designed for use in manufacturing,  
 21 compounding, converting, producing, processing, or preparing controlled  
 22 substances;
- 23 (c) Isomerization devices used, intended for use, or designed for use in increasing  
 24 the potency of any species of plant which is a controlled substance;
- 25 (d) Testing equipment used, intended for use, or designed for use in identifying,  
 26 or in analyzing the strength, effectiveness or purity of controlled substances;
- 27 (e) Scales and balances used, intended for use, or designed for use in weighing or

- 1           measuring controlled substances;
- 2       (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite,  
3           dextrose and lactose, used, intended for use, or designed for use in cutting  
4           controlled substances;
- 5       (g) Separation gins and sifters used, intended for use, or designed for use in  
6           removing twigs and seeds from, or in otherwise cleaning or refining  
7           marijuana;
- 8       (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for  
9           use, or designed for use in compounding controlled substances;
- 10      (i) Capsules, balloons, envelopes, and other containers used, intended for use, or  
11         designed for use in packaging small quantities of controlled substances;
- 12      (j) Containers and other objects used, intended for use, or designed for use in  
13         storing or concealing controlled substances;
- 14      (k) Hypodermic syringes, needles, and other objects used, intended for use, or  
15         designed for use in parenterally injecting controlled substances into the human  
16         body;
- 17      (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or  
18         otherwise introducing marijuana, cocaine, hashish, or hashish oil into the  
19         human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic  
20         pipes with or without screens, permanent screens, hashish heads, or punctured  
21         metal bowls; water pipes; carburetion tubes and devices; smoking and  
22         carburetion masks; roach clips which mean objects used to hold burning  
23         material, such as marijuana cigarettes, that have become too small or too short  
24         to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber  
25         pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice  
26         pipes or chillers.
- 27   (2) It is unlawful for any person to use, or to possess with intent to use, drug



1 paraphernalia for the purpose of planting, propagating, cultivating, growing,  
 2 harvesting, manufacturing, compounding, converting, producing, processing,  
 3 preparing, testing, analyzing, packing, repacking, storing, containing, concealing,  
 4 injecting, ingesting, inhaling, or otherwise introducing into the human body a  
 5 controlled substance in violation of this chapter.

6 (3) It is unlawful for any person to deliver, possess with intent to deliver, or  
 7 manufacture with intent to deliver, drug paraphernalia, knowing, or under  
 8 circumstances where one reasonably should know, that it will be used to plant,  
 9 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,  
 10 process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,  
 11 inhale, or otherwise introduce into the human body a controlled substance in  
 12 violation of this chapter.

13 (4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other  
 14 publication any advertisement, knowing, or under circumstances where one  
 15 reasonably should know, that the purpose of the advertisement, in whole or in part,  
 16 is to promote the sale of objects designed or intended for use as drug paraphernalia.

17 (5) Any person who violates any provision of this section shall be guilty of a Class A  
 18 misdemeanor~~[ for the first offense and a Class D felony for subsequent offenses ]~~.

19 ➔Section 15. KRS 218A.992 is amended to read as follows:

20 (1) Other provisions of law notwithstanding, any person who is convicted of any  
 21 violation of this chapter who, at the time of the commission of the offense and in  
 22 furtherance of the offense, was in possession of a firearm, shall:

23 (a) Be penalized one (1) class more severely than provided in the penalty  
 24 provision pertaining to that offense if it is a felony; or

25 (b) Be penalized as a Class D felon if the offense would otherwise be a  
 26 misdemeanor.

27 (2) The provisions of this section shall not apply to a violation of KRS 218A.210 or

1        **Section 1, 2, or 3 of this Act.**

2        ➔Section 16. KRS 530.064 is amended to read as follows:

3        (1) A person is guilty of unlawful transaction with a minor in the first degree when he  
4        or she knowingly induces, assists, or causes a minor to engage in:

5        (a) Illegal sexual activity; or

6        (b) Illegal controlled substances activity other than activity involving marijuana  
7        **or salvia as defined in Section 4 of this Act;**

8        Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100  
9        where that offense involves commercial sexual activity.

10       (2) Unlawful transaction with a minor in the first degree is a:

11       (a) Class C felony if the minor so used is less than eighteen (18) years old at the  
12       time the minor engages in the prohibited activity;

13       (b) Class B felony if the minor so used is less than sixteen (16) years old at the  
14       time the minor engages in the prohibited activity; and

15       (c) Class A felony if the minor so used incurs physical injury thereby.

16       ➔Section 17. KRS 514.040 is amended to read as follows:

17       (1) A person is guilty of theft by deception when the person obtains property or services  
18       of another by deception with intent to deprive the person thereof. A person deceives  
19       when the person intentionally:

20       (a) Creates or reinforces a false impression, including false impressions as to law,  
21       value, intention, or other state of mind;

22       (b) Prevents another from acquiring information which would affect judgment of  
23       a transaction;

24       (c) Fails to correct a false impression which the deceiver previously created or  
25       reinforced or which the deceiver knows to be influencing another to whom the  
26       person stands in a fiduciary or confidential relationship;

27       (d) Fails to disclose a known lien, adverse claim, or other legal impediment to the

1           enjoyment of property which the person transfers or encumbers in  
 2           consideration for the property obtained, whether the impediment is or is not  
 3           valid or is or is not a matter of official record; or

4           (e) Issues or passes a check or similar sight order for the payment of money,  
 5           knowing that it will not be honored by the drawee.

6       (2) The term "deceive" does not, however, include falsity as to matters having no  
 7       pecuniary significance or puffing by statements unlikely to deceive ordinary persons  
 8       in the group addressed.

9       (3) Deception as to a person's intention to perform a promise shall not be inferred from  
 10      the fact alone that he did not subsequently perform the promise.

11      (4) For purposes of subsection (1) of this section, a maker of a check or similar sight  
 12      order for the payment of money is presumed to know that the check or order, other  
 13      than a postdated check or order, would not be paid, if:

14      (a) The maker had no account with the drawee at the time the check or order was  
 15      issued; or

16      (b) Payment was refused by the drawee for lack of funds, upon presentation  
 17      within thirty (30) days after issue, and the maker failed to make good within  
 18      ten (10) days after receiving notice of that refusal. Notice of the refusal may  
 19      include a citation to this section and a description of this section's criminal  
 20      penalties and shall be deemed properly addressed when mailed to the address  
 21      printed or written on the check or sight order or provided by the drawer or  
 22      maker upon issuance of the check or sight order. The notice, if mailed, shall  
 23      be deemed received by the addressee seven (7) days after it is placed in the  
 24      United States mail. The notice may be sent by first-class mail if supported by  
 25      an affidavit of service setting out the contents of the notice, the address to  
 26      which the notice was mailed, that correct postage was applied, and the date  
 27      the notice was placed in the United States mail. A maker makes good on a

1 check or similar sight order for the payment of money by paying to the holder  
 2 the face amount of the instrument, together with any merchant's posted  
 3 ~~[reasonable]~~ bad check handling fee not to exceed fifty dollars (\$50) and any  
 4 fee imposed pursuant to subsection (5) of this section.

5 (5) If a county attorney issues notice to a maker that a drawee has refused to honor an  
 6 instrument due to a lack of funds as described in subsection (4)(b) of this section,  
 7 the county attorney may charge a fee to the maker of fifty dollars (\$50), if the  
 8 instrument is paid. Money paid to the county attorney pursuant to this section shall  
 9 be used only for payment of county attorney office operating expenses. Excess fees  
 10 held by the county attorney on June 30 of each year shall be turned over to the  
 11 county treasurer before the end of the next fiscal year for use by the fiscal court of  
 12 the county.

13 (6) A person is guilty of theft by deception when the person issues a check or similar  
 14 sight order in payment of all or any part of any tax payable to the Commonwealth  
 15 knowing that it will not be honored by the drawee.

16 (7) A person is guilty of theft by deception when the person issues a check or similar  
 17 sight order in payment of all or any part of a child support obligation knowing that it  
 18 will not be honored by the drawee.

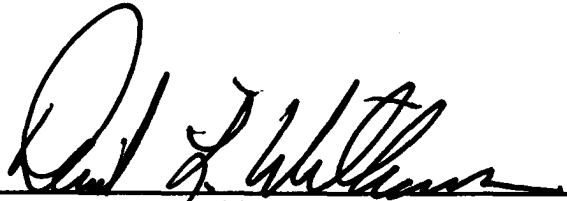
19 (8) Theft by deception is a Class A misdemeanor unless the value of the property,  
 20 service, or the amount of the check or sight order referred to in subsection (6) or (7)  
 21 of this section is:

22 (a) Five hundred dollars (\$500) or more but less than ten thousand dollars  
 23 (\$10,000), in which case it is a Class D felony; or

24 (b) Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.

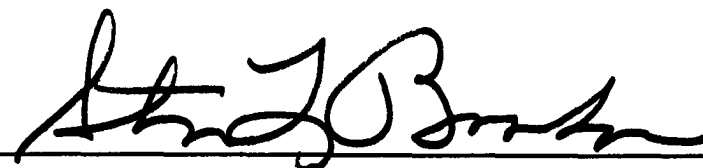
25 ➔Section 18. Whereas salvia divinorum is a dangerous hallucinogen that is  
 26 currently legal to sell and possess in this state, and whereas it is necessary to prohibit the  
 27 sale or possession of this substance immediately in an effort to prevent stockpiling of

- 1   salvia divinorum by individuals for future use, an emergency is declared to exist, and
- 2   Sections 1 to 16 of this Act take effect upon its passage and approval by the Governor or
- 3   upon its otherwise becoming a law.

  
\_\_\_\_\_  
President of Senate

  
\_\_\_\_\_  
Speaker-House of Representatives

Attest:   
\_\_\_\_\_  
Chief Clerk of Senate

Approved   
\_\_\_\_\_  
Governor

Date April 26, 2010